1947.

File No. O. Requisitioned Land (Continuance Powers) 47

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Requisitioned Land (Continuance of Powers) Act, 1947

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9/5/56.

Office of the R.L.A.

The question for the consideration of the Remembrancer of Legal Affairs is whether 15% solatium shall have to be paid in respect of the acquisition of requisitioned lands under section 6(2) of the Requisitioned Land (Continuance of Powers) Act, 1947.

Sub-section (2) of section 6 of the Requisitioned Land (Continuance of Powers) Act, 1947 provides:

"In respect of any acquisition of requisitioned land under this Act or the Ordinance, the amount of compensation payable shall be such sum as would be sufficient to purchase at the market rate prevailing on the date of notice under section 5 a piece of land equal in area to and situated within a distance of three miles from the acquired land etc. or a sum equivalant to twice the market value of the acquired land on the date of its registration, whichever is less; and such amount shall be determined and paid in accordance with the procedure set out in the aforesaid section 19 and the rules made thereunder."

Under clause (c) of section 19(1) of the Defence of India Act, 1939 the arbitrator in making his award shall have regard to the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894 so far as the same can be made applicable. Sub-section (2) of section 23 of the Land Acquisition Act which provides for payment of 15% solatium is a substantive provision and has not been made applicable for the purpose of determining the compensation in respect of the acquisition of requisitioned lands. Consequently no such salatium can be paid in addition to the compensation either under section 6(2) of the Requisitioned Land (Continuance of Powers) Act, 1947

or

or any other provisions of law.

Sd. P.M.Lad,
13/5/47.
Remembrancer of Legal Affairs.

U.R.to R.D.,No.4860, dated the 13th May 1947.

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9/6/56.

R.I.No.6535, dt. 2-6-47.

Secy. R.D. is of the view that the premises can be sub-let to Co-operative Societies. The question for R.L.A's consideration is whether the premises requisitioned for Government Grain Shop- can be sub-let to the Co-operative Societies for grain shops.

x x x

Office of the R.L.A.

Seen and returned.

2. The view taken by Secretary, R.D. is correct.

Sd. P.M.Lad
Remembrancer of Legal Affairs.

U.R.to R.D.,No.5835, dated 4-6-47.

MRP.
9/5/56.

Office of the R.L.A.

In exercise of the powers conferred by rule 75A of the Defence of India Rules, Plots Nos.12,13(12A),21 and 22 Marine Lines, were requisitioned by the Collector of Bombay under his order L.O.Mily./4 dated 24-7-1944 for the use of the Defence Department. As the said plots still continue subject to requisition, the A.D.L.H.& D. Service requests the Collector to make arrangements for transfer of the said plots to the Department of Works, Mines and Powers. The question for R.L.A's consideration is whether there is any legal objection to transfer the said requisitioned plots to the Department of Works, Mines and Powers.

Under section 3 of the Requisitioned Land (Continuance of Powers) Act, 1947, notwithstanding the expiration of the Defence of India Act, 1939, and the rules made thereunder, all requisitioned lands shall continue to be subject to requisition until the expiry of the Act and the appropriate Government may use or deal with any requisitioned land in such manner as appear to it to be expedient. In pursuance of this provision there would be no legal objection to Government transferring the plots in question, which continue to be subject to requisition, from the Defence Department to the Department of Works, Mines and Powers (cf. R.L.A's Nos.5835 and 5836, dated 4-6-1947). The course suggested in para.2 of the R.D. office note would not be correct.

Sd. D. V. Vyas
Remembrancer of Legal Affairs.

U.R.to R.D.,No.6691, dated the 28th June 1947.

MRP.-
9/5/56.

Legal Department.

R.I.No.8166 dated 10-7-47.

The question for consideration is whether the Golf Club land at Chembur which was requisitioned by the Collr. B.S.D., for the Home Deptt. can now be transferred for the use of the Housing Deptt. without specific orders of the Collector, B.S.D. requisitioning it for the Housing Department.

Id. E.P.B.
18/7

A.L.R.

Reply may be:

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9/5/56.

A.L.R.

Reply may be:

Seen and returned.

There would be no legal objection to H.D. transferring the land to the Housing Department (see R.L.A's opinion No.6691 dated 28-6-1947, a copy of which is herewith appended).

Id.R.T.K.
21/7

R.L.A.

Sd. D.V.Vyas
22/7.

U.R.to H.D.No.7720, dated 25-7-1947.

MRP.
9/5/56.

Office of the R.L.A.

Sub-section (1) of section 4 of the Requisitioned Land (Continuance of Powers) Act, 1947 provides that where any requisitioned land is to be released from requisition the appropriate Government may after making such inquiry if any, as it considers necessary, specify by order in writing the person to whom possession shall be given. Under sub-section (2) the delivery of possession of requisitioned land to the person specified in an order made under sub-section (1) shall be a full discharge of the Government from all liability in respect of such delivery, but shall not prejudice any rights in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered. It appears that shops Nos.15, 17 and 19 in Hira Baugh Building were vacant when they were requisitioned and taken possession of by Government. If so, the landlord from whom the shops were requisitioned would prima facie be entitled to restoration on derequisitioning of these shops. Consequently Government may pass an order under sub-section (1) specifying that the possession of these shops should be given to the landlord; and on delivery of possession to the landlord Government would be entitled to a full discharge from all liability. It would be open to the tenant to enforce his rights, if any, against the landlord for possession.

Sd. D.V.Vyas

Remembrancer of Legal Affairs.

U.R.to C.S.D.No.7691, dated the 25th July 1947.

MRP.
9/5/56.

Office of the R.L.A.

The view taken by Food Controller that the requisitioned lands will continue to be subject to requisition by virtue of section 3 of the Requisitioned Land (Continuance of Powers) Act, 1947 notwithstanding the expiry of the Defence of India Rules and the Requisitioned Land (Continuance of Powers) Ordinance, 1946, is correct. If Government considers that the requisitioned land cannot be released, there will be no legal objection to Government refusing the owner's request for release however pressing his needs may be for the land.

Sd. D.V.Vyas
Remembrancer of Legal Affairs.

U.R.to Food Controller,No.7831,dated the 29th July 1947.

MRP.-
/5/56.

Office of the R.L.A.

Re: Derequisitioning Requisitioned Land (Continuance of Powers) Act, 1946.

The first question raised for the consideration of the R.L.A. is whether a certified copy of Government's Order No.44(4)/1426/IV, dated the 14th May 1947, can be granted to the applicant.

It appears that by the aforesaid order the D.M. Ahmedabad was directed to derequisition certain premises and accordingly the D.M. issued an order derequisitioning the applicant's premises. That order of the D.M. is now challenged in court as ultra vires. The applicant desires to produce a copy of Government's order to disprove the contention that the D.M's order is ultra vires. Government's order contains nothing confidential and its production is necessary to prove the legality of the D.M's Order. There appears, therefore, no objection to granting the applicant's request for a certified copy of Government's Order.

The second question for consideration is whether the D.M. cannot legally issue a derequisitioning order. By the Government of India Order No.2481-A, dated the 28-9-46, and the Government of Bombay Order No.2198/45, dated the 23-10-46, the Collectors are empowered to derequisition premises. The order in the present case appears to have been issued by the D.M., Ahmedabad, and not by the Collector. If so, prima facie the order is ultra vires. Whether the order of Government dated the 14-5-47, can be construed as a special empowerment of the D.M.or by itself an independent order making the derequisition legal would be a matter for the Court to decide.

Sd. P.M.Lad
30/9
Remembrancer of Legal Affairs.

U.R.to C.S.D., No.9655, dated the 1st October 1947.

MRP.
9/5/56.

Requisitioned lands.

Requisitioned land (Continuance of Powers) Act, 1947 and Indian (Central Government and Legislature) Act, 1946.

Para.1 of Under Secretary, Revenue Department's note at page 3 ante:-

The point raised by the Under Secretary, Revenue Department, in para.1 of his note is not quite clear. It is however, presumed that what he means is whether this Government can negotiate with the owner of a land requisitioned by the Military Department and with his consent take possession of the temporary structures thereon in cases where the Military Authorities have intimated this Government that they desire to derequisition the land and release the structures. On a land being derequisitioned, the Military Authorities would be entitled to remove the temporary structures erected thereon by them before vacating the land. If the owner of such land is agreeable to the use of such structures by this Government (and consequently of the land on which they stand) on certain terms and the Military Authorities consent to dispose of them to this Govt., there would be no legal objection to this Government occupying and using those structures. There would be no legal objection to negotiating with the owner on an intimation from the Military Authorities about releasing the structures on derequisitioned lands; whether such negotiations should be opened and new commitments made is a matter of policy for the department to decide.

Para.2 Under section 5 of the Requisitioned Land (Continuance of Powers) Act, 1947, the appropriate Government may acquire a requisitioned land; and "appropriate Government" as defined in section 2(1) means in relation to any requisitioned land the Central or Provincial Government by which

or under the authority of which the land has been requisitioned. If it is proposed to acquire the land under the Act, proceedings can be taken only by the Government by which or under the authority of which the land was requisitioned. Each case would have to be decided on that basis.

Para.3. In view of the notification No.7 WL(1)/47, dated 1st March 1947, issued under section 4 of the Indian (Central Government and Legislature) Act, 1946, the Requisitioned Land (Continuance of Powers) Act, 1947, will expire at the end of March 1948. Consequently, all requisitioned lands will have to be derequisitioned before 1st April 1948, unless in the meantime the Indian Dominion Government would, under the new constitution, make any Act, providing for continuance of powers to hold the requisitioned lands.

Para.4 The view expressed by the Under Secretary, Revenue Department is correct.

Sd. P.M.Lad
9/10
Remembrancer of Legal Affairs.

U.R.to R.D.,No.9844, dated the 13th October 1947.

MRP.
10/5/56.

Office of the R.L.A.

Barucha Farm at Palghar.

Requisitioned Lands (Continuance of Powers) Act, 1947.

Leaseholds are interests in land for a limited period. Consequently it would be competent for Government to acquire the interest of Mr.Bharucha in the unexpired part of the lease with the buildings constructed by him (see the definition of "requisitioned land" in clause 4 of section 2 of the Requisitioned Land (Continuance of Powers) Act, 1947, and the definition of "immoveable property" in section 3(25) of the General Clauses Act, 1897).

The presumption made Under Secy., R.D., in the last paragraph of his note at pages 1(a) - 4 is correct.

Sd. P.M.Lad,
8/11
Remembrancer of Legal Affairs.

U.R.to R.D.,No.10768, dated the 10th November 1947.

MRP.
10/5/56.

Office of the R.L.A.

Requisitioned Land (Continuance of Powers) Act, 1945.

Government of India Act, 1935.

Imposing conditions on the Central Government when this Government acquires on their behalf.

It appears that the Defence Department has agreed to consult the Bombay Government before deciding to acquire the requisitioned land. It is stated that in pursuance of such understanding the Bombay Government had in the past imposed a few conditions such as provision of cart tracks for villagers, for payment of valuation of land sufficient to buy another similar land etc. But the Remembrancer of Legal Affairs is requested to advise whether the Bombay Government as an agent acquiring lands for the Central Government under section 5(1) of the Requisitioned Land (Continuance of Powers) Act, 1947, can impose any conditions and if so of what nature.

Under section 127 of the Government of India Act, 1935, any Provincial Government is required to acquire for the Central Government any land situate in the Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, and if the land belongs to the Province, the Provincial Government can be required to transfer it to the Central Government on such terms as may be agreed to or in default of agreement as may be determined by an arbitrator appointed by the Chief Justice of India. It is clear from this provision that a Provincial Government can impose terms only in cases where the land belongs to it and not otherwise. Under section 5(1) of the Requisitioned Land (Continuance of Powers) Act, 1947, read with section 8 this Government can acquire requisitioned lands for the Central Government only a its agent, and on such acquisition the land would vest absolutely in the Central Government free from all encumbrances (see section 5(2)). It is therefore apparent that even under the Requisitiond

Land (Continuance of Powers) Act, 1947, this Government has no power to impose conditions subject to which the requisitioned lands of others can be acquired for the Central Government. The view taken by the Revenue Department is correct.

Sd. P.M.Lad
9/12
Remembrancer of Legal Affairs.

U.R.to R.D.,No.11846, dated the 9th December 1947.

MRP.
10/5/56.